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HOUSE BILL 339

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO CRIMINAL LAW; AMENDING THE ANTITERRORISM ACT;
AMENDING CERTAIN SECTIONS OF THE CRIMINAL CODE THAT RELATE TO
THEFT OF IDENTITY AND UNLAWFUL COMMUNICATIONS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-16-24.1 NMSA 1978 (being Laws
2001, Chapter 138, Section 1) is amended to read:

"30-16-24.1. THEFT OF IDENTITY. --

A. Theft of identity consists of willfully
obtaining, recording or transferring personal identifying
information of another person without the authorization or
consent of that person and with the intent to defraud that
person or another.

B. As used in this section, "personal identifying

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1 information" means information that alone or in conjunction
2 with other information identifies a person, including the
3 person's name, address, telephone number, driver's license
4 number, social security number, place of employment, maiden
5 name of the person's mother, demand deposit account number,
6 checking or savings account number, credit card or debit card
7 number, personal identification number, passwords or any other
8 numbers or information that can be used to access a person's
9 financial resources.

10 C. Except as provided in Subsection D of this
11 section, whoever commits theft of identity is guilty of a
12 misdemeanor.

13 D. Whoever commits theft of identity with the
14 intent to commit or assist in the commission of an act of
15 terrorism or with the intent to use or facilitate the use of a
16 weapon of mass destruction as those terms are defined in
17 Section 30-20A-2 NMSA 1978 is guilty of a second degree
18 felony.

19 ~~[D.]~~ E. Prosecution pursuant to this section shall
20 not prevent prosecution pursuant to any other provision of the
21 law when the conduct also constitutes a violation of that
22 other provision.

23 ~~[E.]~~ F. In a prosecution brought pursuant to this
24 section, the theft of identity shall be considered to have
25 been committed in the county where the person whose

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1 identifying information was appropriated resided at the time
2 of the offense, or in which any part of the offense took
3 place, regardless of whether the defendant was ever actually
4 present in the county.

5 ~~[F.]~~ G. A person found guilty of theft of identity
6 shall, in addition to any other punishment, be ordered to make
7 restitution for any financial loss sustained by a person
8 injured as the direct result of the theft of identity. In
9 addition to out-of-pocket costs, restitution may include
10 payment for costs, including attorney fees, incurred by that
11 person in clearing his credit history or credit rating or
12 costs incurred in connection with a civil or administrative
13 proceeding to satisfy a debt, lien, judgment or other
14 obligation of that person arising as a result of the theft of
15 identity.

16 ~~[G.]~~ H. The sentencing court shall issue written
17 findings of fact and may issue orders as are necessary to
18 correct a public record that contains false information as a
19 result of the theft of identity. "

20 Section 2. Section 30-20-12 NMSA 1978 (being Laws 1967,
21 Chapter 120, Section 2) is amended to read:

22 "30-20-12. USE OF ~~[TELEPHONE]~~ ELECTRONIC OR WRITTEN
23 COMMUNICATION TO TERRIFY, INTIMIDATE, THREATEN OR HARASS
24 ~~[ANNOY OR OFFEND]~~ -- PENALTY. --

25 A. It ~~[shall be]~~ is unlawful for any person, with

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1 intent to terrify, intimidate, threaten or harass [~~annoy or~~
2 ~~offend~~], to [~~telephone~~], by electronic or written
3 communication, communicate with another and use any obscene,
4 lewd or profane language or suggest any lewd, criminal or
5 lascivious act or threaten to inflict injury or physical harm
6 to the person or property of any person. It [~~shall~~] is also
7 [~~be~~] unlawful for any person to attempt by [~~telephone~~]
8 electronic or written communication to extort money or other
9 thing of value from any other person, or to otherwise disturb
10 by repeated anonymous [~~telephone calls~~] electronic or written
11 communications the peace, quiet or right of privacy of any
12 other person at the place where the [~~telephone call or calls~~]
13 communications were received, or to maliciously [~~make a~~
14 ~~telephone call, whether or not conversation ensues~~]
15 communicate, by electronic or written communication, whether
16 or not the communication causes a response, with intent to
17 [~~annoy or~~] disturb another, or to disrupt the
18 [~~telecommunications~~] electronic or written communications of
19 another.

20 B. The use of obscene, lewd or profane language or
21 the making of a threat or statement as set forth in Subsection
22 A of this section shall be prima facie evidence of intent to
23 terrify, intimidate, threaten or harass [~~annoy or offend~~].

24 C. As used in this section:

25 (1) "electronic communication" means a

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1 communication made through an electronic device or medium
2 "Electronic communication" includes communication through a
3 telephone, computer, fax machine, pager or similar device; and

4 (2) "written communication" means a
5 communication made by delivery of a written document.

6 "Written communication" includes communication by public or
7 private mail, courier or similar delivery service.

8 ~~[C.]~~ D. Any offense committed ~~[by use of a~~
9 ~~telephone as set forth]~~ in violation of this section shall be
10 deemed to have been committed at either the place where the
11 ~~[telephone call or calls]~~ communication originated or at the
12 place where the ~~[telephone call or calls were]~~ communication
13 was received.

14 ~~[D.—Whosoever]~~ E. Except as provided in
15 Subsection F of this section, whoever violates this section is
16 guilty of a misdemeanor, unless such person has previously
17 been convicted of such offense or of an offense under the laws
18 of another state or of the United States ~~[which]~~ that would
19 have been an offense under this section if committed in this
20 state, in which case such person is guilty of a fourth degree
21 felony.

22 F. Whoever, in a violation of this section,
23 threatens to inflict injury or physical harm to the person or
24 property of another by an act of terrorism, the use of a
25 destructive device or a weapon of mass destruction, as those

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1 terms are defined in Section 30-20A-2 NMSA 1978, is guilty of
2 a third degree felony unless such person has previously been
3 convicted of such an offense under the laws of another state
4 or of the United States that would have been an offense under
5 this subsection if committed in this state, in which case such
6 person is guilty of a second degree felony.

7 G. Prosecution pursuant to this section shall not
8 prevent prosecution pursuant to any other provision of law
9 when the conduct also constitutes a violation of that other
10 provision. "

11 Section 3. Section 30-20A-1 NMSA 1978 (being Laws 1990,
12 Chapter 66, Section 1) is amended to read:

13 "30-20A-1. SHORT TITLE. -- ~~[This act]~~ Chapter 30, Article
14 20A NMSA 1978 may be cited as the "Antiterrorism Act". "

15 Section 4. Section 30-20A-2 NMSA 1978 (being Laws 1990,
16 Chapter 66, Section 2) is amended to read:

17 "30-20A-2. DEFINITIONS. -- As used in the Antiterrorism
18 Act:

19 A. "act of terrorism" means any act of violence
20 that is or may reasonably be expected to be dangerous to human
21 life or to cause property damage in excess of twenty thousand
22 dollars (\$20,000) and that is intended to intimidate or coerce
23 a civilian population or influence the policy or conduct of
24 any unit of government;

25 ~~[A.]~~ B. "civil disorder" means any planned act of

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1 violence by an assemblage of two or more persons with the
2 intent to cause damage or injury to another individual or his
3 property;

4 [~~B.~~] C. "destructive device" means:

5 (1) any explosive, incendiary or poison gas:

6 (a) bomb;

7 (b) grenade;

8 (c) rocket having a propellant charge
9 of more than four ounces;

10 (d) missile having an explosive or
11 incendiary charge of more than [~~one-quarter~~] one-fourth ounce;

12 (e) mine; or

13 (f) similar device;

14 (2) any type of weapon that can expel or may
15 be readily converted to expel a projectile by the action of an
16 explosive or other propellant, the barrel or barrels of which
17 have a bore of more than six-tenths inch in diameter, except a
18 shotgun, shotgun shell or muzzle loading firearm that is
19 generally recognized as particularly suitable for sporting
20 purposes; or

21 (3) any part or combination of parts either
22 designed or intended for use in converting or assembling any
23 device described in Paragraphs (1) and (2) of this subsection.

24 The term "destructive device" [~~shall~~] does not include
25 any device that is neither designed nor redesigned for use as

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1 a weapon unless the device is readily convertible for use as a
2 weapon;

3 ~~[C-]~~ D. "firearm" means any weapon that can expel
4 or is designed to or may readily be converted to expel a
5 projectile by the action of an explosion, the frame or
6 receiver of any such weapon, any firearm muffler or firearm
7 silencer. "Firearm" includes any handgun, rifle or shotgun;
8 [~~and~~

9 ~~D-]~~ E. "law enforcement officer" means any
10 employee of a police or public safety department administered
11 by the state or any political subdivision of the state where
12 the employee is responsible for the prevention and detection
13 of crime and the enforcement of the penal, traffic or highway
14 laws of this state. "Law enforcement officer" includes any
15 member of the New Mexico national guard; any peace officer of
16 the United States, any state, any political subdivision of a
17 state or the district of Columbia; any member of the New
18 Mexico mounted patrol or the national guard, as defined in 10
19 U.S.C. Sec. 101(9); any member of the organized militia of any
20 state or territory of the United States, the commonwealth of
21 Puerto Rico or the district of Columbia not included within
22 the definition of national guard; and any member of the armed
23 forces of the United States. "Law enforcement officer" also
24 means any person or entity acting as a contractor for any
25 other law enforcement officer, police or public safety

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1 department described in this section; and

2 F. "weapon of mass destruction" means any device
3 capable of releasing a radioactive, biological, toxic or
4 chemical agent in any form or by any means that will or that
5 may reasonably be expected to produce death, bodily harm or
6 illness in a civilian population."

7 Section 5. Section 30-20A-3 NMSA 1978 (being Laws 1990,
8 Chapter 66, Section 3) is amended to read:

9 "30-20A-3. UNLAWFUL ACTS--PENALTY. --

10 A. Any person who teaches or demonstrates the use,
11 application or making of [~~any~~] a knife, box cutter or similar
12 device or a firearm, destructive device, weapon of mass
13 destruction or technique capable of causing injury or death to
14 any person with the intent that the knowledge or skill taught,
15 demonstrated or gained be [~~unlawfully~~] used in furtherance of
16 a civil disorder, act of terrorism or the use or threatened
17 use of a weapon of mass destruction is guilty of a [~~fourth~~]
18 third degree felony [~~and shall be sentenced under the~~
19 ~~provisions of the Criminal Sentencing Act to imprisonment for~~
20 ~~a definite term of eighteen months or, in the discretion of~~
21 ~~the sentencing court, to a fine of not more than five thousand~~
22 ~~dollars (\$5,000) or both].~~

23 B. Any person who trains, practices or receives
24 instruction in the use of [~~any~~] a knife, box cutter or similar
25 device or a firearm, destructive device, weapon of mass

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1 destruction or technique capable of causing injury or death to
2 any person with the intent that the knowledge or skill taught,
3 demonstrated or gained be [~~unlawfully~~] used in furtherance of
4 a civil disorder, act of terrorism or the use or threatened
5 use of a weapon of mass destruction is guilty of a [~~fourth~~]
6 third degree felony [~~and shall be sentenced under the~~
7 ~~provisions of the Criminal Sentencing Act to imprisonment for~~
8 ~~a definite term of eighteen months or, in the discretion of~~
9 ~~the sentencing court, to a fine of not more than five thousand~~
10 ~~dollars (\$5,000) or both].~~

11 C. Whoever commits an act of terrorism or uses a
12 weapon of mass destruction is guilty of a first degree felony.

13 D. Prosecution pursuant to this section shall not
14 prevent prosecution pursuant to any other provision of law
15 when the conduct also constitutes a violation of that other
16 provision. "

17 Section 6. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect
19 immediately.